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SUBJECT: LAOS AND U.S. HOLD INITIAL DISCUSSIONS ON REPATRIATION

¶1. (SBU) Summary: A three-member joint State/DHS(ICE) delegation traveled to Vientiane for "preliminary discussions" about the repatriation to Laos of Lao nationals and former Lao nationals. The Government of Laos (GOL) representatives agreed that they are obligated under international law to take back Lao nationals. Both sides recognized, however, that the issue of former nationals is more difficult, and requires further consideration. After an exchange of views, during which a number of questions were raised, each side agreed to submit written questions to, and to answer written questions from, the other side, in the near future, with a view possibly meeting again in Vientiane in September. The USG needs to consider what kind of arrangement and provisions will best meet its objectives. A round of discussions on this topic in 2001 ended without an agreement, but improvements in the bilateral relationship enhance prospects of success this time. End summary.

¶2. (SBU) Representatives of the U.S. and Lao governments held preliminary discussions on repatriation at the Ministry of Foreign Affairs on July 31. A previous round of discussions in 2001 ended without agreement. The Lao government agreed to this meeting on the understanding that it would be a preliminary discussion and not a negotiating session and that nothing that either side said would be considered binding in future discussions.

¶3. (U) Following is a list of participants:

Lao Government:

- Mai Sayavong, Deputy Director General, Department of Europe and Americas, Ministry of Foreign Affairs
- Bounpheng Xaykanya, Deputy Director General, Treaties and Legal Affairs Department, Ministry of Foreign Affairs
- Bounliep Hounvongsone, Director, Cabinet Division, Department of Consular Affairs, Ministry of Foreign Affairs
- Phounsavath Volalat, Department of Immigration, Ministry of Public Security
- Naronglith Norasing, Deputy Director General of Rule of Law in Lao PDR, Ministry of Justice
- Souphanh Hadaoheuang, Deputy Director, Americas Division, Ministry of Foreign Affairs

The U.S. delegation was composed of:

- Mary McLeod, Assistant Legal Adviser for East and South Asia, Department of State
- Mary Grace McGeehan, Deputy Chief of Mission, U.S. Embassy
- John Crosson, Deportation Liaison Officer, Office of International Affairs, U.S. Immigration and Customs Enforcement, Department of Homeland Security
- Joan Lieberman, Associate Legal Adviser, Office of the Principal Legal Adviser, U.S. Immigration and Customs Enforcement, Department of Homeland Security
- Joshua Archibald, Economic and Commercial Officer, U.S. Embassy

¶4. (SBU) McLeod opened by saying that, as evidenced by recent reciprocal returns of nationals (20 to Laos within the last year and

one-half, 2 of Americans recently), both sides appeared to agree that a country has an obligation under international law to accept the return of its nationals. The question of former nationals was more difficult, but countries do take them back under certain circumstances. She noted that the USG has entered into arrangements with Cambodia and Vietnam and hoped to do so with Laos, and offered to provide copies of the Cambodia and Laos arrangements if the GOL requested. (Note: The Lao side did not request these documents.) She suggested that the two sides discuss international law principles and the domestic law of each country concerning loss of nationality. Mai agreed that Lao had an obligation to take back its nationals, but noted that nationality is often difficult to determine. This issue has arisen in the current issues with Thailand on the return to Laos of ethnic Hmong.

15. (SBU) Crosson explained that when we want to return a foreign national, we currently go to the embassy in D.C. with (1) the order of removal (2) the criminal or immigration charges and (3) identity documents. Sometimes consular officials interview the individual to determine whether he or she is a national. An agreement between the USG and the GOL on repatriation would outline these procedures. In the end, the decision whether or not to accept a return is up to the receiving country on a case by case basis. Mai agreed that consideration should be on a case by case basis. He added that the law of the receiving state must be considered, e.g., with respect to whether a person has lost nationality by escaping and being out of the country without contacts for a number of years.

16. (SBU) McLeod clarified that repatriation procedures would apply only to people who have not become U.S. citizens; the U.S. government would not seek to repatriate a dual national. Lieberman explained that when a final order of removal is issued against a legal permanent resident (LPR), which only happens after various levels of review, LPR status terminates and the individual no longer has a legal immigration status in the U.S. Mai commented that it is difficult to make people in Laos understand why the USG expects Laos to accept the return of LPRs who had lived in the U.S. for many years before committing crimes.

17. (SBU) The discussion turned to the 2004 GOL nationality law. McLeod asked for clarification on how an individual loses nationality under Article 20, which on its face provides for loss of nationality after a Lao citizen lives abroad 7 years without authorization, or if his/her authorization to live abroad has expired and he or she is not registered with a Lao embassy or consulate abroad, or if he or she is abroad 10 years "without legal connection" with Laos.

18. (SBU) Norasing and Mai explained that the nationality law was somewhat in flux. Lao nationals can lose nationality by application to the National Assembly (apparently similar to renunciation under U.S. law). The requirement for an exit visa was abolished in January 2007, but Lao nationals who leave are supposed to register at a Lao Embassy or Consulate and receive an I.D. card, which is good for one year, but can be extended. If they do not register for 10 years, they lose their "legal connection" under the statute. Norasing explained that the nationality law was in flux (for instance, there are new decrees for granting permanent residency under consideration now), and undertook to get back to the U.S. side on how the loss of nationality provisions of the law are currently implemented.

19. (SBU) McLeod asked whether an individual who stayed away 11 years without contact would be admitted back to Laos. Bounliep said that was a difficult question. Both Canada and the USG have submitted applications for the return of such individuals. If they have Lao identification, Laos has no problem accepting them. If they don't have identification to prove their citizenship, however, Laos cannot recognize them as Lao citizens. They are "in the middle," stateless. He indicated that the GOL had rejected more than 100 applications of such individuals. (Comment: It was unclear to the American side in what time frame these applications were made. End comment.)

110. (SBU) Mai sought clarification about the legal basis in the U.S. for detention of individuals who had served their criminal sentences. Lieberman and Crosson explained that immigration detention is not intended as punishment, but rather to make sure

that their immigration status is adjudicated, and they are removed if they no longer have the right to remain in the U.S. Lieberman explained that under U.S. Supreme Court decisions in 2001 and 2005, immigration detention can only last for a period of time reasonably necessary to remove the individual, usually six months.

¶11. (SBU) Bounliep indicated that there are some U.S. LPRs living illegally in Laos, whom the GOL would like to send back to the U.S., and sought clarification on how they could be returned to the U.S. The U.S. side explained that under some circumstances LPRs who remain outside the U.S. can lose their right to return, but undertook to provide a more detailed explanation in writing. McLeod explained that it is very difficult to lose U.S. citizenship, as opposed to LPR status. The individual must intend to lose status and commit the expatriating act voluntarily. Norasing then said that for a Lao national to lose nationality, he or she should have acquired another nationality.

¶12. (SBU) Bounpheng asked whether individuals who do not have money are provided free legal representation during immigration proceedings. Lieberman explained that, while they have the right to representation and there are often pro bono attorneys available, the USG does not pay for such representation. McLeod added that courts have found a right to counsel in criminal, but not civil cases. In any event, the due process concerns in cases involving the removal of individuals who have been convicted of crimes are not as strong, because the conviction is the reason for removal, and the individual had the right to counsel, at government expense if necessary, in the criminal proceeding. When McLeod asked whether the GOL provided free legal assistance in immigration proceedings, Norasing indicated that he was not sure but noted that there are legal aid clinics, including mobile clinics, in Laos. (Note: The mobile clinic program is run by the Asia foundation through a grant from a private foundation.)

¶13. (SBU) Mai asked how many individuals were under consideration by the U.S. for return to Lao. McLeod indicated there were about 4100 and gave him the latest figures, but noted that there would need to be case by case review in each case, and the USG would not be expecting to send back large numbers at a time.

¶14. (SBU) As the discussions drew to a close, McLeod suggested that the two sides exchange written questions and responses in the near future, with a view to possibly meeting in September. While making no commitment, Mai indicated receptivity to the USG's suggesting a date. At a future meeting, he said, the Lao side would like to have an agenda with concrete questions to address.

¶15. (SBU) Comment: In addition to formulating questions for the GOL, the U.S. side will need to consider what we want to come out of these discussions. In particular, we need to consider whether it would be preferable to do a less formal MOU (along the lines of the Cambodian Memorandum specifying procedures for removal and return) that does not on its face limit the universe of persons for whom we could seek return, rather than seek a formal agreement (like the Vietnamese agreement) which would more likely take longer and result in limitations on the persons for whom we could seek removal. We note that the representatives on the Lao side of the discussion were mid-level officials who had been given approval to engage in preliminary discussion but not to negotiate formally. Therefore, their comments must be taken as reflecting their own views and understanding rather than formal commitments or authoritative statements of Lao law and practice. While the Lao side appeared receptive to future discussions, it will be up to more senior officials to decide whether to move forward.

MCGEEHAN